

**IN THE CIRCUIT COURT FOR BLOUNT COUNTY, TENNESSEE
EQUITY DIVISION**

NEW MIDLAND PLAZA ASSOCIATES, et al.,

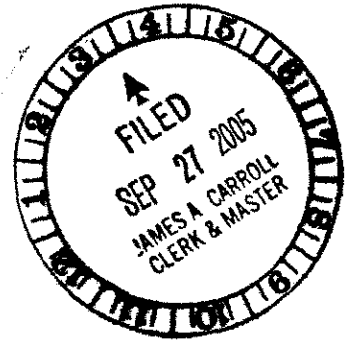
Plaintiffs,

v.

FIRST UNION NATIONAL BANK, et. al.,

Defendants.

CIVIL ACTION NO. E-18053

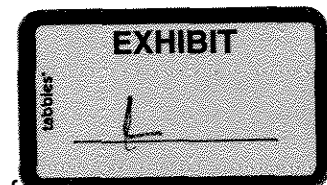


MOTION TO ALTER OR AMEND ORDER

Now comes the Plaintiff, New Midland Plaza Associates, a Tennessee general partnership, and respectfully moves the Court to alter or amend the Order entered this day, September 27, 2005, with regard to the directive that New Midland Plaza Associates shall make payment to Wagner, Myers & Sanger by 5:00 p.m. today of the difference between \$1,629,872.40 minus the total amount of the funds on deposit as of the date of this Order. The Order prepared and presented by counsel for Alcoa Calderwood and signed by the Court is impossible to perform by 5:00 p.m. today.

Plaintiff further renews its objections to:

- (a) The propriety of the notice of hearing (*i.e.*, a letter that counsel had arranged with the Clerk last Friday to hear a yet to be filed Motion on Tuesday (today).
- (b) A violation of the Court's previous Order that any Motions are to be scheduled jointly with counsel and that the Court would entertain no Motion unless counsel had conferred and attempted to agree upon the date.



(c) The refusal of the Court to allow Plaintiff ten (10) days to file any objections or comments regarding the Report of Special Master Winchester, all as more particularly provided by Rule 53 of the Tennessee Rules of Civil Procedure.

Plaintiff further submits that the Order prepared by the Defendants is draconian and attempts to once again set the Plaintiff up for contempt of Court when in fact any difference in monies due and owing should be reflected in a Judgment.

WHEREFORE, Plaintiff prays that the Order of September 27, 2005, be amended and that the claimed difference be reflected only in a judgment.

RESPECTFULLY SUBMITTED,

KIZER & BLACK, ATTORNEYS, PLLC

BY: 

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Tn Bar 000999

And

BRIAN P. FLAHERTY, ESQUIRE
Wolf, Block, Schorr and Solis-Cohen, LLP
1650 Arch Street
22nd Floor
Philadelphia, Pennsylvania 19103-2097

I hereby certify that the within is a true
Copy of the original filed in this court.



Clerk & Master

CERTIFICATE OF SERVICE

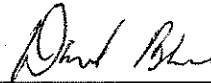
I hereby certify that I have this 27th day of September, 2005, caused a true and correct copy of **MOTION TO ALTER OR AMEND ORDER** shall be served on the following by facsimile transmission and first-class mail, postage prepaid:

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